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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re VINCENT M, a Person Coming Under the
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

STEPHEN M.,

Defendant and Appellant.

F063152

(Super. Ct. No. 95188-6)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Mary Dolas,
Commissioner.

Gino V. De Solenni, under appointment by the Court of Appeal, for Defendant and
and Appellant.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel.

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* Before Wiseman, Acting P.J., Levy, J. and Gomes, J.

Stephen M. (father) appeals from an order terminating parental rights (Welf. & Inst. Code, § 366.26) to his three-year-old son, Vincent.¹ Father contends that because he did not receive court-ordered visitation and the juvenile court did not enforce its visitation order, his due process rights were violated and reversal is required. On review, we disagree and affirm.

PROCEDURAL AND FACTUAL HISTORY

Vincent's Previous Dependency

In the spring of 2008, when Vincent was approximately three weeks old, he was detained and juvenile dependency proceedings were initiated due to both parents' neglect. Police found father, who was intoxicated, carrying Vincent in an infant carrier while riding a bicycle. Father was arrested for child endangerment.

Soon thereafter, father was arrested, convicted, and sentenced to a four-year prison term for felony domestic violence. Father has remained incarcerated ever since.

The juvenile court removed Vincent from parental custody and ordered services for the mother. Father waived visitation rights while he was incarcerated. Mother eventually reunified and, in February 2010, the juvenile court terminated its dependency jurisdiction over Vincent.

Vincent's Current Dependency

Approximately six months later, in August 2010, mother was unable to care for Vincent due to her alcohol abuse and her arrest on a felony child abuse charge. Consequently, respondent Fresno County Department of Social Services (department) detained Vincent and initiated new dependency proceedings for him. At an August 20, 2010, detention hearing, the juvenile court authorized quarterly, supervised visitation between Vincent and father.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Father did not attend this or any of the subsequent juvenile court proceedings. He waived transportation from prison, as it would delay his release date.

In October 2010, the juvenile court exercised its dependency jurisdiction over Vincent on multiple grounds. In February 2011, the court adjudged Vincent a juvenile dependent and removed him from parental custody. It also denied both parents reunification services.

As to father, the juvenile court found services for him would be detrimental to Vincent under section 361.5, subdivision (e)(1). In so doing, the court specifically found father failed to maintain contact with Vincent and was previously denied custody of Vincent when Vincent's earlier dependency case concluded. In addition, there was no evidence that Vincent knew who father was or that father had been involved in Vincent's life. Nevertheless, the court did continue its order for quarterly, supervised visits while father was incarcerated.

The court concluded its February 2011 disposition by setting a section 366.26 hearing in May 2011 to select and implement a permanent plan for Vincent. Due to father's absence, he was served with notice by mail of his writ remedy to challenge the juvenile court's setting order. Father did not seek writ review of the court's decision.

The department later reported that Vincent was likely to be adopted and asked the court to terminate parental rights. Vincent's relative careprovider was committed to adopting him. As the likelihood of Vincent's adoption is undisputed, we do not summarize the supporting evidence here. In its report, the department also stated Vincent had not had any contact with father and that father failed to maintain contact with him.

The juvenile court eventually conducted the section 366.26 hearing in June 2011. At the hearing and for the first time, father's counsel mentioned father had not received visitation. The court, having found Vincent was likely to be adopted, terminated parental rights.

DISCUSSION

Three-year-old Vincent has no relationship to speak of with father. Vincent's last contact with father apparently occurred when the child was three weeks old and father was arrested and later incarcerated. For the next 20 months, during Vincent's original dependency, father waived any visitation with Vincent and did not maintain any contact with him. During Vincent's current dependency, father was entitled to quarterly visits between the child's August 2010 detention and the court's June 2011 section 366.26 hearing. This calculates to at most four visits. None of the four visits, however, occurred but, father never complained.

Nevertheless, father contends he is entitled to reversal of the termination order because the juvenile court should have enforced its visitation order. (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1505 (*Hunter S.*)). Because the court did not do so, father claims the juvenile court violated his due process rights. In father's estimation, the court's failure to enforce its visitation order prevented him from being able to argue at the section 366.26 hearing that termination of parental rights would be detrimental to Vincent on a theory of a beneficial parent/child relationship (§ 366.26, subd. (c)(1)(B)(i)). As discussed below, we conclude father's argument is meritless.

First, by his silence in the juvenile court over the course of Vincent's dependency, father has forfeited his appellate argument. It is a party's duty to look after his or her legal rights and call the court's attention to any infringement of them. (*Sommer v. Martin* (1921) 55 Cal.App. 603, 610.) Consequently, on appeal, a party is precluded from urging any point not raised in the trial court. (*Parker v. City of Fountain Valley* (1981) 127 Cal. App.3d 99, 117.) Any other rule would permit a party to play fast and loose with the administration of justice by deliberately standing by without making an objection of which he is aware and thereby permitting the proceedings to go to a conclusion which he may acquiesce in, if favorable, and which he may avoid, if not. (*In re Christian J.* (1984) 155 Cal. App. 3d 276, 279.)

Along these same lines the case law father relies upon, *Hunter S.*, *supra*, 142 Cal.App.4th 1497, does not support his claim of error. Father overlooks the fact that the parent in *Hunter S.* repeatedly asked the court to enforce its visitation order for over two years when her son refused to visit her. (*Id.* at pp. 1502-1503, 1505.) Each time the court declined to issue any order, which the appellate court concluded was an erroneous delegation of the juvenile court's authority to the child. (*Id.* at p. 1505.)

In addition, father did not seek writ review when the juvenile court, in February 2011, set the section 366.26 hearing. He consequently forfeited any appellate claim regarding the lack of visitation at least through that point in the proceedings. (§ 366.26, subd. (I).)

Finally, assuming *arguendo* the law required the juvenile court to monitor its visitation orders *sua sponte*, we would conclude any error was harmless under the circumstances of this case. The lack of four court-ordered visits over the ten-month period does not convince us, even under a heightened standard, that father was prejudiced given the lack of any meaningful relationship between Vincent and father prior to August 2010. (*In re James F.* (2008) 42 Cal.4th 901, 905 et seq.)

DISPOSITION

The order terminating parental rights is affirmed.